

CLAIM AMENDMENTS

Claims 1 through 3 (canceled)

Claim 4 (currently amended): A carpet comprising at least a pile layer and at least one backing layer, wherein said pile layer comprises fibers extending in a direction opposite said at least one backing layer, wherein said at least one backing layer comprises a plurality of ~~thermoplastic~~ polypropylene tape fibers, and wherein at least one of said ~~thermoplastic~~ polypropylene tape fibers comprises ~~comprises~~ at least 10 ppm of a nucleator compound and exhibits a tensile strength of at least 3 grams/denier.

Claim 5 (original): The carpet of Claim 4 wherein said nucleator compound is selected from the group consisting of p-MDBS, 3,4-DMDBS, 2,4,5-TMDBS, DBS, sodium benzoate, NA-11, NA-21, and any mixtures thereof.

Claim 6 (original): The carpet of Claim 5 wherein said nucleating agent is p-MDBS.

Claim 7 (currently amended): A carpet comprising at least a pile layer and at least one backing layer, wherein said pile layer comprises fibers extending in a direction opposite said at least one backing layer, wherein said at least one backing layer comprises a plurality of ~~thermoplastic~~ polypropylene tape fibers, wherein said at least one of said ~~thermoplastic~~ polypropylene tape fibers comprises at least 10 ppm of a nucleator compound, and wherein said at least one polypropylene tape fiber exhibits a shrinkage rate after exposure to 150°C hot air of less than 2%[[,]] and a tensile strength of greater than 2.5 grams/denier.

Claim 8 (original): The carpet of Claim 7 wherein said nucleator compound is selected from the group consisting of p-MDBS, 3,4-DMDBS, 2,4,5-TMDBS, DBS, sodium benzoate, NA-11, NA-21, and any mixtures thereof.

Claim 9 (original): The carpet of Claim 8 wherein said nucleating agent is p-MDBS.

Claim 10 (currently amended): A carpet comprising at least a pile layer and at least one backing layer, wherein said pile layer comprises fibers extending in a direction opposite said at least one backing layer, wherein said at least one backing layer comprises a plurality of ~~thermoplastic~~ polypropylene tape fibers, wherein at least one of said ~~thermoplastic~~ polypropylene tape fibers comprises at least 10 ppm of a nucleator compound, and wherein said at least polypropylene tape fiber exhibits an x-ray scattering pattern such that the center of the scattering peak is at 0.4 degrees or lower.

Claim 11 (original): The carpet of Claim 10 wherein said nucleating agent is selected from the group consisting of p-MDBS, 3,4-DMDBS, 2,4,5-TMDBS, DBS, sodium benzoate, NA-11, NA-21, and any mixtures thereof.

Claim 12 (original): The carpet of Claim 11 wherein said nucleating agent is p-MDBS.

REMARKS

Claims 4-12 are pending within this application. Claims 4, 7, and 10 have been amended merely to correct for typographical errors and to provide clearer language, particularly in terms of the specific type of fibers present within the inventive carpet article. No new matter has been presented, nor has such a cosmetic modification of such claims altered the scope of the claims themselves. No claims have been added either.

Such amendments render moot the rejection over 35 U.S.C. § 112, first paragraph, as well as the rejection over now-cancelled Claims 1-3 under 35 U.S.C. § 102(e).

The Office has rejected all of the claims under the judicially created doctrine of obviousness-type double patenting over U.S. Pat. No. 6,541,554, as well as (provisionally) over the claims of U.S. Pat. Appl. No. 10/036,604. Applicants supply herein proper Terminal Disclaimers to overcome such rejections.

The Office has also rejected Claims 4-12 under 35 U.S.C. § 102(e) as being anticipated by, or in the alternative, under 35 U.S.C. § 103(a) as being unpatentable over U.S. Pat. No. 6,541,554. Such a cited prior art reference issued on April 1, 2003, thereby limiting its applicability over the present application as a reference under 35 U.S.C. § 102(e) (as set forth by the Office). As stated in 35 U.S.C. § 103(c), and in view of the Statement to Disqualify such a reference as prior art provided herein, the fact that both the current application and the '554 patent were subject to an assignment to Milliken & Company at the time the currently claimed invention was made, such a reference cannot properly be cited against the pending claims. Thus, neither of the alternative bases of rejection are proper either. For that reason, it is respectfully requested that reconsideration and withdrawal of such bases of rejection be performed in this instance by the Office. Reconsideration and withdrawal of such a basis of rejection are thus earnestly solicited.

The Office has also rejected Claims 1-12 under 35 U.S.C. § 103(a) as being unpatentable over Fujishita et al. in view of Conner et al. Applicants respectfully disagree with the basis of this rejection primarily because the Fujishita et al. reference does not provide proper and/or sufficient motivation to incorporate any nucleating agents within polypropylene tape fibers, contrary to the Office's position. Fujishita et al. do state that previous attempts at providing improved heat shrinkability and tenacity to polypropylene fibers was followed through the utilization of nucleating agents within the base resins. However, patentees specifically state on col. 2, lines 25-29, that such a procedure and there was no observation of heat shrinkability improvements within those target fibers at all. In order to attain their low-shrink, high-tenacity fibers, Fujishita et al. were forced to chemically select certain isotactic pentad ratios and other like modifications to the base polypropylenes, rather than utilizing non-reactive additives, such as nucleating agents, for such a result. As such, it is evident that Fujishita et al. teach a path that is not only divergent from that followed by Applicants and is that which is now embodied within their pending claims, but is completely opposite therefrom as well. The fact that Conner et al. teach the presence of nucleating agents within their non-low-shrink fibers fails to remedy this problem. It is well settled within the realm of patent law that a teaching away from a claimed invention fails to provide the necessary motivation for an ordinarily skilled artisan to have actually produced such an invention in view of the divergent cited prior art. Such is the case here. Reconsideration and withdrawal of this improperly applied basis of rejection are therefore respectfully requested.

CONCLUSION

In view of the amendments and remarks above, it is respectfully submitted that the pending application is now in condition for allowance and it is thus respectfully requested that such application be passed on to issue.

Respectfully requested,

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CERTIFICATE OF MAILING

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